

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Zeely Rush,)
)
Plaintiff,)
)
vs.)
)
Jo Anne B. Barnhart, Commissioner,)
Social Security Administration,)
)
Defendant.)

**ORDER ADOPTING
REPORT AND RECOMMENDATION**

Case No. 1:05-cv-054

The above-entitled action was referred to Magistrate Judge Charles S. Miller, Jr., for the issuance of a Report and Recommendation. Magistrate Judge Miller issued his Report and Recommendation on February 10, 2006, wherein he recommended that the case be remanded to the Commissioner for an award of adult SSI benefits in an appropriate amount beginning from when the plaintiff would first become eligible for such benefits and for a determination of whether Childhood Disability Benefits should be awarded after applying the sequential evaluation criteria for Childhood Disability Benefits, or for an award of benefits in an appropriate amount.

On February 27, 2006, the Commissioner filed an objection to the Report and Recommendation. See Docket No. 15. The Commissioner asserts that in light of the conflicting evidence in this case and the need to complete the administrative record, the matter should be remanded for further administrative proceedings.

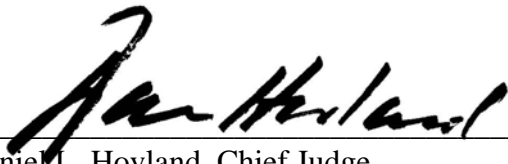
The Court has carefully reviewed the record along with the Report and Recommendation and finds that Magistrate Judge Miller's Report and Recommendation is thorough and persuasive. Accordingly, the Court **ADOPTS** the Report and Recommendation (Docket No. 14). The Defendant's Motion for Summary Judgment (Docket No. 12) is **DENIED** and the Plaintiff's Motion

for Summary Judgment (Docket No. 8) is **GRANTED**. The decision of the Commissioner is reversed and the matter is remanded to the Commissioner for an award of adult SSI benefits in an appropriate amount beginning from when the plaintiff would first become eligible for such benefits, and for a determination of whether Childhood Disability Benefits should be awarded after applying the sequential evaluation criteria for Childhood Disability Benefits or for an award of benefits in an appropriate amount. See 42 U.S.C. § 405(g) (remanding pursuant to sentence four).

The Clerk of Court is directed to enter judgment accordingly.

IT IS SO ORDERED.

Dated this 2nd day of March, 2006.



Daniel L. Hovland, Chief Judge
United States District Court